

**OPINION
59-29**

September 12, 1959 (OPINION)

ALCOHOLIC BEVERAGES

RE: Subsidies By Dealers and Manufacturers - Subsidizing Prohibited
Retailer's Ownership of Stock in Brewery

This is in reply to your request for an opinion on the question whether or not a retailer in alcoholic beverages is prohibited from purchasing or owning stock in a brewery corporation under the North Dakota Laws.

It is presumably chapter 5-06 of the 1957 Supplement, or more specifically 5-0602 entitled "Subsidizing Prohibited" which gives rise to this question. This section in substance provides that no manufacturer or wholesaler, either directly or indirectly, shall own or control or have any financial interest in any retail business selling beer or alcoholic beverages. It also prohibits the manufacturer or wholesaler from giving, lending, or advancing credit or other things of value to a retailer. Likewise it prohibits the wholesaler from furnishing, giving, lending, leasing or selling any furniture, fixtures, fittings, or equipment to any retailer. It also prohibits the wholesaler from lending or giving money to the retailer for the payment of license fees. Section 5-0604 provides that any retailer who shall be a party to the violation of the above provision shall be equally guilty with the manufacturer or wholesaler and will be subject to the penalty set out in section 5-0605.

It is noted that the restriction or prohibition is against the wholesaler or manufacturer for subsidizing the retailer, and not against the retailer subsidizing the wholesaler. There is no restriction or prohibition against a retailer purchasing or owning stock in a corporation engaged in the manufacturing or wholesaling of alcoholic beverages.

The restriction is unilateral and not bilateral in the sense that it is in one direction or way only. For that matter the purchasing or owning of stock in a corporation does not constitute subsidizing such corporation.

The object of chapter 5-06 is to keep the retailer free and independent of the manufacturer or wholesaler. It is designed to prevent the manufacturer or wholesaler from exercising control over the retailer.

From the clear import of the statutory language it is our opinion that a retailer is not prohibited or restricted under penalty of law from purchasing or owning stock in a corporation engaged in the manufacture or selling of alcoholic beverages. A brewery is a manufacturer and as such this conclusion also applies to a brewery.

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